

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SHAWNCEY BLAKE,  
Plaintiff,

v.

COUNTY OF SANTA CLARA,  
Defendant.

Case No. [16-cv-01279-HSG](#)

**ORDER OF DISMISSAL WITH LEAVE  
TO AMEND; DENYING MOTION FOR  
CLASS CERTIFICATION**

Re: Dkt. No. 6

**INTRODUCTION**

Plaintiff, an inmate at the Santa Clara County Jail, filed this *pro se* civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed a motion to proceed as a class action. Docket No. 6. Plaintiff is granted leave to proceed *in forma pauperis* in a separate order. For the reasons stated below, the complaint is dismissed with leave to amend and the motion for class certification is DENIED.

**DISCUSSION**

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). *Pro se* pleadings must be liberally construed, however. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only ““give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim for relief that is plausible on its face.” *Id.* at 570.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

Plaintiff alleges that the following conditions of confinement at the Santa Clara County Jail constitute cruel and unusual punishment in violation of his rights under the Eighth Amendment: inadequate ventilation; poor air circulation; high levels of lead and chemicals in the water; poor sanitation; roach and gnat infestations; exposed plumbing; sewage leakage in the *pro-per* phone room; mold in the showers; a constant high pitched noise that affects Plaintiff’s ears and Plaintiff’s sleep; and overcrowding that exacerbates his mental health issues. Docket No. 1 (“Compl.”) at 3. Plaintiff also alleges that he has been retaliated against for his civil lawsuits by being forced to remain in a higher classification status than other similarly situated inmates. *Id.* Plaintiff also alleges that he fears for his safety because prison officials “retaliate [against], beat, and murder mentally ill inmates. *Id.* Plaintiff names as defendants Santa Clara County and the Santa Clara County Department of Corrections (“DOC”).

Liberally construed, Plaintiff’s allegations that there is a constant high pitched noise in the prison that affects Plaintiff’s ears and Plaintiff’s sleep; and that the prison is overcrowded, exacerbating his mental health issues, state cognizable Eighth Amendment claims. *See Keenan v.*

1 *Hall*, 83 F.3d 1083, 1090 (9th Cir. 1996), *amended*, 135 F.3d 1318 (9th Cir. 1998) (“[P]ublic  
 2 conceptions of decency inherent in the Eighth Amendment require that [inmates] be housed in an  
 3 environment that, if not quiet, is at least reasonably free of excess noise.”) (quoting *Toussaint v.*  
 4 *McCarthy*, 597 F. Supp. 1388, 1397, 1410 (N.D. Cal. 1984), *aff’d in part, rev’d in part on other*  
 5 *grounds*, 801 F.2d 1080, 1110 (9th Cir. 1986)); *see Akao v. Shimoda*, 832 F.2d 119, 120 (9th Cir.  
 6 1987) (allegations of increase in stress, tension, communicable diseases, and confrontations  
 7 between inmates due to overcrowding states 8th Amendment claim). However, Plaintiff has not  
 8 stated an Article III controversy for his allegations regarding inadequate ventilation; poor air  
 9 circulation; high levels of lead and chemicals in the water; poor sanitation; roach and gnat  
 10 infestation; exposed plumbing; sewage leakage in the pro-per phone room; and mold in the  
 11 showers. Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and  
 12 “Controversies.” U.S. Const., Art. III, § 2. To establish Article III standing, a plaintiff must show  
 13 (1) an injury in fact, meaning an invasion of a legally protected interest which is both concrete and  
 14 particularized, and actual or imminent, not conjectural or hypothetical; (2) a sufficient causal  
 15 connection between the injury and the conduct complained of; and (3) a likelihood that the injury  
 16 will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)  
 17 (internal quotation marks and citations omitted). Plaintiff has not alleged that he has suffered  
 18 injury from these particular conditions of confinement. General grievances about conditions of  
 19 confinement do not state an Article III case or controversy. *Lujan*, 504 U.S. at 573–74 (“[A]  
 20 plaintiff raising only a generally available grievance about government—claiming only harm to  
 21 his and every citizen’s interest in proper application of the Constitution and laws, and seeking  
 22 relief that no more directly and tangibly benefits him than it does the public at large—does not  
 23 state an Article III case or controversy.”). In addition, Plaintiff’s vague allegation that there is  
 24 exposed plumbing does not, without more, state a cognizable Eighth Amendment claim. Plaintiff  
 25 does not explain how the exposed plumbing constitutes cruel or unusual punishment.  
 26 Accordingly, Plaintiff’s claims regarding inadequate ventilation; poor air circulation; high levels  
 27 of lead and chemicals in the water; poor sanitation; roach and gnat infestations; sewage leakage in  
 28 the pro-per phone room; mold in the showers; and exposed plumbing are DISMISSED with leave

1 to amend. Plaintiff may attempt to cure the identified deficiencies in an amended complaint by  
2 specifying how these particular conditions of confinement violated his constitutional rights, if he  
3 can do so in good faith.

4 Liberally construed, Plaintiff's allegation that he was assigned to a higher classification  
5 status than is appropriate in retaliation for filing civil lawsuits states a cognizable First  
6 Amendment retaliation claim. *See Rhodes v. Robinson*, 408 F.3d 559, 567–68 (9th Cir. 2005)  
7 (“Within the prison context, a viable claim of First Amendment retaliation entails five basic  
8 elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
9 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's  
10 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
11 correctional goal.”).

12 Plaintiff's vague and conclusory allegation that he fears for his safety because prison  
13 officials retaliate against, beat, and murder mentally ill inmates fails to state a cognizable Eighth  
14 Amendment claim. Although the Federal Rules of Civil Procedure adopt a flexible pleading  
15 policy, a complaint must give fair notice and state the elements of the claim plainly and succinctly.  
16 *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege, with  
17 at least some degree of particularity, overt acts which Defendants engaged in that support  
18 Plaintiff's claim. *Id.*

19 Plaintiff's complaint suffers an additional deficiency. The complaint does not state a claim  
20 against the named defendants. Plaintiff has named as defendants Santa Clara County, or the Santa  
21 Clara County DOC, which is a department of Santa Clara County. To impose liability under  
22 Section 1983 against a municipal entity such as Santa Clara County for a violation of  
23 constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of  
24 which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts  
25 to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the  
26 moving force behind the constitutional violation. *Plumeau v. School Dist. #40 County of Yamhill*,  
27 130 F.3d 432, 438 (9th Cir. 1997); *see Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978).  
28 Plaintiff does not allege any policy by Santa Clara County or the Santa Clara County DOC that

1 allegedly led to the constitutional violations. Plaintiff's complaint is DISMISSED with leave to  
2 amend to cure the identified deficiency if he can do so in good faith.

3 Plaintiff is advised that pursuant to Federal Rule of Civil Procedure 8(a), all that is  
4 required is a "short and plain statement of the claim showing that the pleader is entitled to relief."  
5 Fed. R. Civ. P. 8(a). Plaintiff should list each legal claim separately. For each claim, Plaintiff  
6 should list the specific factual allegations supporting the claim and identify how each defendant  
7 caused or participated in the violation. It is not necessary for Plaintiff to cite case law or include  
8 legal argument. If Plaintiff is alleging municipal liability, Plaintiff must specify what policy led to  
9 the constitutional violation.

10 Plaintiff is cautioned that he may only pursue claims for constitutional violations which  
11 have caused him injury; he may not sue generally about prison conditions that have not affected or  
12 will not affect him.

13 Plaintiff is further cautioned that he should list his claims in the body of the amended  
14 complaint. The Court will not read through the exhibits to construe claims. Plaintiff is strongly  
15 encouraged to keep his statements concise and to omit irrelevant details.

16 In addition, Plaintiff is informed that the Court is not a repository for Plaintiff's evidence.  
17 Plaintiff should not file documentary evidence in support of his claims unless it is necessary for  
18 the resolution of a motion.

19 **C. Motion for Class Certification**

20 Plaintiff has filed a motion requesting certification as a class action. However, *pro se*  
21 plaintiffs are not adequate class representatives able to fairly represent and adequately protect the  
22 interests of the class. *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975); *see also Simon*  
23 *v. Hartford Life, Inc.*, 546 F.3d 661, 664–65 (9th Cir. 2008) ("courts have routinely adhered to the  
24 general rule prohibiting *pro se* plaintiffs from pursuing claims on behalf of others in a  
25 representative capacity") (citing cases); *Russell v. United States*, 308 F.2d 78, 79 (9th Cir.1962)  
26 ("a litigant appearing in propria persona has no authority to represent anyone other than himself").  
27 Accordingly, Plaintiff's motion to certify this case as a class action is DENIED. Plaintiff is  
28 limited to asserting claims for violations of his own civil rights and may not litigate claims on

1 behalf of other prisoners.


2 **CONCLUSION**

3 For the foregoing reasons, Plaintiff's motion to proceed as a class action is DENIED, and  
4 the complaint is DISMISSED with leave to amend, as indicated above, within **thirty (30)** days of  
5 this order. The pleading must be simple and concise and must include the caption and civil case  
6 number used in this order (16-1279 HSG (PR)) and the words AMENDED COMPLAINT on the  
7 first page. **Failure to file a proper amended complaint within the designated time will result**  
8 **in the dismissal of this action.** The Clerk of the Court shall send plaintiff a blank civil rights  
9 form along with his copy of this order.

10 Plaintiff is advised that an amended complaint supersedes the original complaint. "[A]  
11 plaintiff waives all causes of action alleged in the original complaint which are not alleged in the  
12 amended complaint." *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).  
13 Defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*,  
14 963 F.2d 1258, 1262 (9th Cir. 1992).

15 **IT IS SO ORDERED.**

16 Dated: 8/1/2016

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18 HAYWOOD S. GILLIAM, JR.  
United States District Judge

United States District Court  
Northern District of California